

F NO. 196/32/WZ/2018-RA

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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005**

F NO. 196/32/WZ/2018-RA / 1895

Date of Issue: 18.05.2022

ORDER NO. 30/2022-ST (WZ) /ASRA/MUMBAI DATED 20.05.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

Applicant : M/s Carnival Support Services India Pvt. Ltd.

Respondent : Commissioner of CGST & CX, Mumbai East.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PK/784/ME/2018 dated 29.08.2018 passed by the Commissioner(Appeals-II), GST & CX, Mumbai.

ORDER

This Revision Application is filed by : Carnival Support Services India Pvt. Ltd., situated at Kurla(w), Mumbai 400070 (herein after as "the Applicant") against the Order-in-Appeal PK/784/ME/2018 dated 29.08.2018 passed by the Commissioner(Appeals-II), GST & CX, Mumbai.

2. Issue in brief is that the applicant is registered vide Registration No.AAACF9691FST001 for providing the services viz. Crew manning and management services. The applicant carries on the activity of recruitment, orientation, rotation management, payroll processing and other crew related activities. The crew members enter into employment contracts with the Principals. All the said services are exported to recipients who are located and incorporated abroad (i.e. outside India) who remit the service consideration in fully convertible forex. The cenvat credit on input and input services arising in the process of providing output services remain unutilized and are therefore claimed as refund. The applicant had filed refund claims under Notification No. 27/2012-CE (NT) dated 18.06.2012 on the grounds that the output services provided during the said period have been exported and that they were not in a position to utilize the cenvat Credit of duty/Service tax taken on the input services used for providing such services for export. After considering each parameters as prescribed the adjudicating authority vide order-in-original No. AC/R-166/DN.I/ST-VII/BNP/17-18 dated 2106.2017 rejected the refund claims partially. Aggrieved by the impugned order, the Applicant filed appeal with the Commissioner (Appeals-II), GST & CX, Mumbai, who vide Order-in-Appeal No. /GST A-III/MUM/415/17-18 dated 15.02.2018 rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the Applicant had filed this revision Application under Section 35EE of the Central Excise Act, 1944 before the Government.

4. Personal hearing in this case was fixed for 17.12.2021, on behalf of the Applicant, Shri. Shrenik Shah, CA appeared and reiterated his submissions. He submitted an additional written submission. He further submitted that rental charges were paid in obligation to fulfillment of contract (para 12). Therefore he contended that S.T. paid on rental charges paid in pursuance of contract is required to be refunded.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal. It is observed that the dispute is regarding admissibility of refund claim by the Applicant under the provisions of Notification No. 27/2012-ST dated 18.06.2012.

6. Government observes that the Notification No. 27/2012-ST dated 18.06.2012 has been issued in exercise of the powers conferred by Rule 5 of the Cenvat Credit Rules ,2004. The preamble of the notification is reproduced below for a better appreciation of its ambit.

"G. S. R -(E).- In exercise of the powers conferred by rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said rules"), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No 5/2006 - Central Excise (N.T), dated the 14th March, 2006, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 156(E), dated the 14th March, 2006, the Central Board of Excise and Customs hereby directs that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely:-

It is clear from the text that unutilised cenvat credit in respect of rule 5 of Cenvat Credit Rules ,2004 may be refunded in terms of this notification.

7. The powers for revision under the statute are limited to certain matters. Revision Applications in service tax matters are filed before the Central

Government as per the provisions of Section 35EE of the CEA, 1944(made applicable to service tax matters by Section 83 of FA, 1994) in terms of the first proviso of sub-section (1) of Section 86 of the FA, 1994. The Section 86 specifies the orders which are to be appealed against before the Appellate Tribunal with a proviso for exceptions where revision application is to be preferred. The Section 86 of the FA, 1994 is reproduced below for the sake of lucidity.

“Section 86. Appeals to Appellate Tribunal. –

(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise(Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.

Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944).

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012(23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944).”

7.1 Sub-section (1) of Section 86 of the FA, 1994 stipulates that appeals against orders of Commissioner(Appeals) are to be filed before the Appellate Tribunal. However, a specific category has been carved out of these orders in the first proviso to sub-section (1) of Section 86; viz. orders relating to grant of rebate of service tax on input services and rebate of duty paid on inputs where services have been exported are directed to be dealt with in accordance with the provisions of Section 35EE of the CEA, 1944. Unmistakably, the refund of unutilized cenvat credit in respect of rule 5 of Cenvat Credit Rules ,2004 does not fall in the exception category and therefore the assessees aggrieved by these orders cannot obtain relief by filing revision applications under Section 35EE.

8. Government concludes that since the present case involves refund claim under the provision of Rule 5 of the Cenvat Credit Rules, 2004, read with Rule 6A of the Service Tax Rules, 1994 and further read with Notification No. 27/2012-CE(NT) dated 18.06.2012 in respect of unutilized cenvat credit lying in balance, the matter is beyond the scope of the revisionary powers vested in the Central Government under Section 35EE of the CEA, 1944 read with the proviso to sub-section (1) of Section 86 of the FA, 1994. In the result, the revision application filed by the applicant is not maintainable under Section 35EE of the CEA, 1944.

9. In view of the above discussion, the Revision Application is not found maintainable before the Government and hence it is rejected.

Shrawan
12/05/22

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 56/2022-ST (WZ) /ASRA/Mumbai Dated 12.05.2022

To,
M/s. Carnival Support Service(India) Pvt. Ltd.,
Unit No. 25-B, Commercial Kohinoor City,
Tower 2, Kirol Rd off LBS Marg Kurla(w)
Mumbai-400070.

Copy to:

1. The Commissioner GST & CX, Mumbai East.
2. The Commissioner (Appeals-II), GST & CX Mumbai.
3. The Dy. Asst. Commissioner of GST & CX(Refunds), Mumbai East, Mumbai.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file